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Supreme Court of the United States

OCTOBER TERM, 1960

No. 92

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• OTHO G. BELL, ET AL., PETITIONERS,

*vs.*

UNITED STATES.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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PETITION FOR CERTIORARI FILED MAY 17, 1960  
CERTIORARI GRANTED JUNE 27, 1960

# SUPREME COURT OF THE UNITED STATES

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**IN THE UNITED STATES COURT OF CLAIMS**

Docket No. 547-56

OTHO G. BELL (1), WILLIAM A. COWART (2),  
LEWIE W. GRIGGS (3), Plaintiffs,

vs.

THE UNITED STATES OF AMERICA, Defendant.

PETITION—Filed December 31, 1956

*To the Honorable, The United States Court of Claims:*

Otho G. Bell, William A. Cowart and Lewie W. Griggs, plaintiffs herein, respectfully show unto the court and allege as follows:

I.

That plaintiffs are citizens of the United States.

II.

That plaintiff, Otho G. Bell, enlisted in the United States Army on January 29, 1949; that plaintiff, William A. Cowart, enlisted in the United States Army on January 7, 1949; that plaintiff, Lewie W. Griggs, enlisted in the [fol. 2] United States Army on August 4, 1949.

III.

That plaintiff, Otho G. Bell, was captured in combat by enemy forces in Korea on November 30, 1950; that plaintiff, William A. Cowart, was captured in combat by enemy forces in Korea on July 12, 1950; that plaintiff, Lewie W. Griggs, was captured by enemy forces in Korea on April 25, 1951.

IV.

That all of the plaintiffs were dishonorably discharged from the United States Army on January 23, 1954.



## V.

That each of the plaintiffs was a corporal in the United States Army from the time of his capture until the time of his discharge.

## VI.

That none of the plaintiffs received any pay or allowances as members of the United States Army from the time of his capture until the time of his discharge.

## VII.

That the claim and demand of each of the plaintiffs for his pay and allowances as a member of the United States Army from the time of his capture until the time of his discharge was presented to the Department of the Army for payment. That on the 2nd day of October, 1956, each of the plaintiffs' claims for payment was denied in writing [fol. 3] by the Department of the Army.

## VIII.

That no action ~~is~~ now pending or has ever been undertaken on plaintiffs' claims by Congress, or by any department of the defendant, or in any judicial proceedings, other than as stated above.

## IX.

That these claims are made and based upon:

1. Section 232 of Title 37 of the U.S.C. (Oct. 12, 1949, c 681, Title II, section 201, 63 Stat. 805; May 19, 1952, c 310, section 1 (2), 66 Stat. 79);
2. Section 237 of Title 37 of the U.S.C. (Oct. 12, 1949, c 681, Title II, section 206, 63 Stat. 811);
3. Executive Order No. 10168 (Oct. 11, 1950, 15 F.R. 6877);
4. And other acts of Congress and Executive Orders relative to payment of the Armed Forces.

## X.

That plaintiff, Otho G. Bell, claims pay and allowances from November 30, 1950, until January 23, 1954, as a corporal in the United States Army, serving outside the continental limits of the United States, amounting to \$4,580.71, more or less; that plaintiff William A. Cowart, claims pay and allowances from July 12, 1950, until January 23, 1954, as a corporal in the United States Army, serving outside the continental limits of the United States, amounting to \$5,057.18, more or less; that plaintiff, Lewie [fol. 4] W. Griggs, claims pay and allowances from April 25, 1951, until January 23, 1954, as a corporal in the United States Army, serving outside the continental limits of the United States, amounting to \$4,071.12, more or less.

## XI.

That each of the plaintiffs is and always has been the sole owner of his claim herein stated; that none of the plaintiffs has ever assigned or transferred his said claim.

## XII.

That plaintiffs believe the facts as they are herein stated to be true.

## XIII.

That plaintiffs are justly entitled to recover the amounts herein claimed.

Wherefore, plaintiff, Otho G. Bell, prays judgment against the United States of America for the sum of \$4,580.71, with interest as provided by law; plaintiff, William A. Cowart, prays judgment against the United States of America for the sum of \$5,057.18, with interest as provided by law; plaintiff Lewie W. Griggs, prays judgment against the United States of America for the sum of \$4,071.12, with interest as provided by law.

Dated, Castro Valley, California, December 20, 1956.

Robert E. Hannon, Attorney for Plaintiffs.

[fol. 5]

## IN THE UNITED STATES COURT OF CLAIMS

No. 547-56

[Title omitted]

## DEFENDANT'S ANSWER AND COUNTERCLAIM—

Filed August 30, 1957

For its answer to plaintiffs' petition, defendant admits, denies and alleges as follows:

1. The allegations contained in paragraph I constitute conclusions of law, but insofar as they may be deemed to be allegations of material fact, they are denied.
2. Admits the allegations of paragraph II.
3. Admits the allegations of paragraph III.
4. Admits the allegations of paragraph IV.
5. Denies the allegation of paragraph V that each of the plaintiffs was a Corporal in the United States Army at the time of his capture and alleges that at such time each of the plaintiffs was a Private First Class. Denies the balance of the allegations of said paragraph concerning the status of plaintiffs as Corporals during their captivity, but admits that during said period, the Department of the Army, without knowing of plaintiffs' activities, took routine administrative action to reflect a change in plaintiffs' records to the grade of Corporal as of May 1, 1953.
6. Admits the allegations contained in paragraph VI, except that, defendant advanced on behalf of plaintiff Bell, for insurance (Class N Allotment) and for dependents (Class E and Q Allotments), the sum of \$6,182.50, and advanced on behalf of plaintiff Griggs, for insurance and for dependents (Class N and E Allotments), the sum of \$1,898.24.
7. Admits the allegations contained in paragraph VII.
8. Defendant's attorney lacks knowledge or information sufficient to form a belief as to the allegations contained

in paragraph VIII, and defendant therefore denies the same.

9. Alleges that the allegations contained in paragraph IX constitute conclusions of law and that defendant is not called upon to answer the same, but that insofar as they may be deemed to constitute allegations of fact, defendant denies the same.

10. Denies the allegations contained in paragraph X.

11. Defendant lacks knowledge or information sufficient to form a belief as to the allegations contained in paragraph XI, and therefore denies the same.

12. Denies the allegations contained in paragraph XII.

13. Denies the allegations contained in paragraph XIII.

[fol. 7] 14. Denies all allegations in plaintiffs' petition not heretofore admitted or qualified.

#### First Affirmative Defense

15. Plaintiffs were among twenty-one prisoners of war who had served in the Army in Korea, were captured, and in August 1953 refused to be repatriated and returned to United States control when they were released from prison. Instead, plaintiffs elected to remain with the Communists and in a communist country. Because plaintiffs refused repatriation when they were released from prison as prisoners of war, and because plaintiffs continued in their election until January 23, 1954, they were on that date dishonorably discharged from the Army.

16. Between the time of plaintiffs' capture and the time of their dishonorable discharges, each plaintiff adhered to, worked for and collaborated with the enemy of the United States and was therefore guilty of a breach of his contract of enlistment and of his oath of enlistment for faithful service. Therefore, each plaintiff abandoned his status as a soldier in the United States army and forfeited all pay and allowances to which he might otherwise have been entitled under his enlistment contract.

## Second Affirmative Defense

17. During the period for which they seek to recover pay and allowances herein, plaintiffs advocated the overthrow of the Government of the United States or were members of a political party or organization which so ad-[fol. 8] vocated. Therefore, plaintiffs are not entitled to recover under the provisions of Section 9A of the Act of August 2, 1939 (53 Stat. 1148), as amended (5 USC 118j), and the Appropriation Acts applicable to the periods for which they seek to recover pay and allowances (Section 609, National Military Establishment Appropriation Act of 1950; 63 Stat. 1018 and subsequent Defense Appropriation Acts).

### Counterclaim Against Otho G. Bell

18. Defendant advanced on behalf of plaintiff Bell for insurance (Class N Allotment) and dependents (Class E and Q Allotments), the sum of \$6,182.50.

19. Plaintiff Bell has not repaid said \$6,182.50 or any part thereof.

20. Plaintiff Bell owes defendant \$6,182.50 by reason of the foregoing advance.

### Counterclaim Against William A. Cowart

21. Defendant advanced plaintiff Cowart for his expenses to return to the United States the sum of \$355.00.

22. Plaintiff Cowart has not repaid said \$355.00 or any part thereof.

23. Plaintiff Cowart owes defendant \$355.00 by reason of the foregoing advance.

### Counterclaim Against Lewie W. Griggs

24. Defendant advanced on behalf of plaintiff Griggs for insurance and dependents (Class N and E Allotments) the sum of \$1,898.24.

25. Plaintiff Griggs has not repaid said \$1,898.24 or any part thereof.

[fol. 9] 26. Plaintiff owes defendant \$1,898.24 by reason of the foregoing advance.

Wherefore, defendant demands that plaintiffs' petition be dismissed and that defendant have judgment against plaintiffs on the counterclaims herein for the sum of \$6,182.50, with interest, against plaintiff Bell, \$355.00, with interest, against plaintiff Cowart and \$1,898.24, with interest, against plaintiff Griggs.

George Cochran Doub, Assistant Attorney General,  
Civil Division.

Francis X. Daly, Attorney, Civil Division, Department  
of Justice.

[fol. 11]

IN THE UNITED STATES COURT OF CLAIMS  
No. 547-56

[Title omitted]

PLAINTIFF'S REPLY TO COUNTERCLAIM—  
Filed September 25, 1957

For reply to defendant's counterclaim, plaintiffs admit, deny and allege as follows:

I

Plaintiff's attorney lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 18 through 25 of defendant's answer, and placing his denial on that ground, denies generally and specifically each and every, all and singular, the allegations contained in said paragraphs.

Wherefore, plaintiffs pray that defendant take nothing by its counterclaim and that plaintiffs have judgment against the defendant as asked in the complaint.

Robert E. Hannon, Attorney for Plaintiffs.



[fol. 13]

## IN THE UNITED STATES COURT OF CLAIMS

No. 547-56

[Title omitted]

## STIPULATION OF FACTS—Filed January 21, 1959

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the facts hereinafter set forth shall, for the purposes of this case, be deemed to have been elicited from defendant's witnesses testifying under oath. The facts so elicited, and hereinafter set forth, have not been rebutted by plaintiffs or by plaintiffs' witnesses, and plaintiffs, and each of them, hereby waive the right to testify or to call witnesses to testify in rebuttal of these facts. Defendant reserves the right to offer additional evidence either by way of testimony or exhibits, and plaintiffs, and each of them, reserve the right to offer rebuttal evidence, either by way of testimony or exhibits, to rebut any such additional evidence, if any, offered by defendant. Plaintiffs, and each of them, also reserve the right to object to the materiality and relevancy of any of the agreed facts hereinafter set forth.

[fol. 14]

Re: *Otha G. Bell*

1. Plaintiff Bell enlisted in the United States Army on January 29, 1949. On November 30, 1950, he was captured with other United States soldiers by the Chinese Communist forces in Korea. At the time of his capture he was a Private First Class. Upon capture he was confined in Prisoner of War Camp #5 located at Pyoktong, North Korea.

2. Plaintiff Bell voluntarily served as a monitor in required squad study group meetings organized by the Chinese, beginning about January 1, 1951. As squad monitor, he procured Communist propaganda literature from the enemy, distributed said writings among the squad members, and instructed them to read and discuss this literature. He threatened to turn in the names of any prisoners of war [fol. 15] who refused to read or discuss favorably these

Communist propaganda hand-outs. In these forced attendance study group meetings he also lectured and led the discussions favorable to the Communist cause and condemnatory of the United States, e.g., stating that the United States engaged in germ warfare, that the United States had caused the Korean war, that American forces had committed atrocities, that there were many more advantages about Communism than about democracy. He voluntarily attended the special Voluntary Study Group maintained by the Chinese to indoctrinate the so-called Progressives. He voluntarily joined the Peace Committee, whose members espoused Communism through public address system broadcasts, and through distribution of propaganda articles and petitions.

3. Plaintiff Bell made tape recordings which were then broadcast over the Peiping radio and over the prison camp's public address system. He stated that the Chinese treatment of the prisoners of war was good; requested that his parents and relatives write President Truman to end the war and withdraw the Seventh Fleet from Formosa; said that the Korean war was senseless; avowed that on the orders of his platoon leader, his men killed North Korean prisoners of war; vilified President Truman as a war-monger; averred that life was better in China than in the United States; declared the American political parties were led by imperialists.

4. Plaintiff Bell participated in numerous Communist propaganda activities. He wrote articles which appeared in the camp newspaper, *Towards Truth And Peace*, and in magazines entitled, *People's China*, and *China Monthly Review*. In these articles plaintiff alleged that American troops had committed atrocities against North Korean civilians and enemy soldiers and that he personally had been [foi. 16] ordered to kill women and children and not to take prisoners; he ridiculed the American Army; he praised the good treatment accorded the prisoners of war by the Chinese; he wrote that the United States was unjustified in sending troops to Korea, and that he wanted to go to China to fight for peace and did not want to return to America; he urged the prisoners of war to vow to fight for world peace



on their return to the United States; he accused President Truman of forcing the United States into war and if given the opportunity he would run a tank over the President's body. Plaintiff Bell was paid money to write these articles. With the money he was paid to write these articles, he purchased candy and cigarettes in the Chinese post-exchange in Pyoktong.

5. Plaintiff Bell was a member of the so-called "Wall Paper Committee" whose duties were to hang enemy propaganda articles, pictures, cartoons and slogans on the camp bulletin board. He delivered lectures before his company and to the camp upon American aggression, and belittled America's economic and educational systems. He wrote letters to the United Nations in which he declared that American troops had committed atrocities against enemy civilians and soldiers, and that prisoners of war were receiving good treatment from their captors.

6. Plaintiff Bell drew cartoons and posters depicting American atrocities and use of germ warfare, which were pinned upon the camp bulletin boards and printed in the above-named publications. He drew up and signed peace petitions addressed to President Truman, the United Nations, to relatives of prisoners of war, and to peace organizations, *e.g.*, Stockholm Peace Appeal, the Vienna Peace [fol. 17] Conference, and the Asia and Pacific Peace Conference. Further, the Chinese made motion pictures of plaintiff as he signed the petition addressed to the Asia and Pacific Peace Conference. He led a group of so-called Progressives in camp carrying banners depicting President Truman as a clown and slogans reading "Down with capitalists". Plaintiff Bell appeared in bi-monthly plays—one entitled "Golden Boy" depicting poverty and racial discrimination in the United States, and the other which he wrote was entitled "The Highest Stage of Capitalism" concerning the overthrow of the United States. He appeared voluntarily in a Chinese motion picture in which he portrayed an American rifleman captured by the Communists. The motion picture depicted atrocities committed by American soldiers and the low morale of the American forces. He also signed surrender leaflets. He attempted to and/or

persuaded other prisoners of war to join the Voluntary Study Group and the Peace Committee. He also tried to and/or persuaded other POWs to sign petitions, to follow and accept Communistic theories, and to make recordings.

7. Plaintiff Bell made the following statements—that for every good point about the American Government, there were three good things about Communism; that the South Koreans started the war and that it was like the Civil War in the United States; that American troops were tools and hatchet-men of American imperialists; that the United States and the United Nations had no right to be in the war; that the United States engaged in germ warfare; that if he were given a weapon he would fight against the United States and that he had attempted to join the Chinese Army but had been refused; that he would return from China in five years and would teach Communism and help fight for Communism; that the working people are slaves and can- [fol. 18] non fodder for the capitalists; that he was not going to return to the United States and planned to renounce his citizenship and stay in China to fight for the peoples' side.

8. Plaintiff Bell wore the Chinese uniform, plus the Peace Dove medal (given by the Chinese to show that the wearer was in sympathy with Communism) and the Mao Tse Tsung medal (given by the Chinese to so-called Progressives) to identify them as Communists and to reward them for their achievements and learning in Communistic ideology. He consorted with the Chinese. He attended enemy parties held in Pyoktong. He visited the Chinese company and regimental headquarters in the prison camp frequently, in the day and at night. He took walks and talked with Chinese officers, inside and outside the camp. He was accorded special privileges by the Chinese, *e.g.*, more and better food and drink, better medical treatment, freedom of the camp, lighter work details.

9. As squad leader in Camp #5, he sold food intended for the sick to other POWs at \$5.00 a bowl. As monitor of the forced study group, he had food rations for some men cut down because they would not favorably discuss Com-

munism, and threatened to turn in the names of men who did not study the Communist literature. He informed on other POWs. As monitor of the forced study group, he would inform the Chinese if a squad member refused to read required propaganda literature, or failed to voice a [fol. 19] pro-Communist opinion in the discussion periods. He told the Chinese that a certain POW was planning to escape and, as a result, the POW was placed in solitary confinement. He told the Chinese that he and others in his outfit had killed Chinese POWs and this falsification caused the Chinese to attempt to pressurize another POW into writing a story about these atrocities. He told the Chinese that the 2d Infantry Division massacred South Korean civilians. A United States POW was interrogated as a result of plaintiff's written statement to the Chinese that American troops herded Communist POWs on a ship and injected poison gas into their blood; that the American Air Force bombed women and children, and that he saw an American lieutenant and enlisted men rape a Korean woman.

10. Plaintiff Bell turned in names to the Chinese of POWs whom he had ordered to obtain their rations, but who had been too ill to obey. He reported a POW who had refused to fall out for exercise, who was therefore sentenced to 15 days at hard labor with his rations cut to one meal a day. He informed on POWs who stole wood from the Chinese. He also informed the Chinese that POWs had stolen food for which acts they were put into solitary confinement. As a result of plaintiff's relation to the Chinese, a POW had a fight with another POW and one of them was placed in solitary. Because he reported to the Chinese that certain POWs had criticized him, those POWs were made to stand outdoors in the sun all day and were sentenced to hard labor. He reported to the Chinese the name of a POW who planned to escape, and the latter was placed in "the hole" where he died. Because he gave the names to the Chinese of POWs who participated in a sit-down strike, one of the men was bayoneted and the rest were placed in solitary. A POW was forced to stand in an icy river because plaintiff told the Chinese that the former had "talked back" to him.

11. The Korean armistice was signed July 27, 1953, and prisoner repatriation began August 5, 1953, at Panmunjon. Plaintiff Bell refused repatriation and voluntarily elected to go to Communist China. After going to Communist China, he attended the Ideological Reformation School in Taiyuan, China, where Communist ideology was taught, for seven months. He was assigned to a machine center on a collective farm in the Yellow River Valley, China, where he worked until his return to the United States. On January 23, 1954, plaintiff Bell was dishonorably discharged from the United States Army. He returned to the United States in July 1955.

*Re: William A. Cowart*

1. Plaintiff Cowart enlisted in the United States Army on January 7, 1949. On July 12, 1950, he was captured in combat by North Korean forces in Korea with other United States soldiers. At the time of his capture, he was a Private First Class. He refused to help carry wounded United States soldiers as the POWs were being marched away from the point of capture near Chochiwon, Korea.

2. Plaintiff Cowart stole food from other POWs in the North Korean prison camps. He visited the headquarters of the North Korean forces frequently, and conversed with Korean officers and Russian civilians there. He told the North Korean captors that two fellow POWs had beaten him for stealing their food. He informed a North Korean colonel that the POWs had disobeyed orders by giving prisoners too ill to work full rations rather than half rations. He informed North Korean captors that a POW had stolen foodstuffs and that a POW was planning to escape. He signed a petition calling on the United Nations forces to lay down their arms. He received extra tobacco rations from the North Korean guards and was given light work details.

3. Subsequent to October 19, 1951, plaintiff Cowart was transferred to Chinese Prisoner of War Camp #3. He was a monitor of the forced study group there, and was a member of the Voluntary Study Group attended by all so-called Progressives for the purpose of Communist indoctrina-

tion. He influenced or attempted to influence other POWs to join the Voluntary Study Group and to believe in the Communistic dogma. He made tape recordings which were later broadcast over Peiping radio and over the camp public address system. He therein broadcast about the good treatment accorded to POWs by the Chinese. He urged that America end the war and the American Government be petitioned to end the war. He declared that the Korean war was useless, that American soldiers were being cheated by the capitalists and war-mongers of Wall Street, and that America should cooperate with the Chinese.

4. Plaintiff Cowart was a member of the Peace Committee which drew up, signed and circulated peace petitions. He wrote propaganda articles which appeared in *Towards Truth And Peace* and in the *China Monthly Review*. He wrote that American soldiers committed atrocities, that Americans used germ warfare, that the Chinese had a better educational system than the United States in that in America only the wealthy could obtain an education, that the United States used germ warfare, that the American people had been misled and that the United States was [fol. 22] waging an aggressive war. He reviewed the Communist books he had read. He drew propaganda posters and cartoons, depicting capitalists living off the masses, Uncle Sam hanging from a tree or lying in a coffin with the words written "For Peace and Against American Aggression" and "Down With War Mongers", depicting Uncle Sam carrying a bomb, and Uncle Sam on his knees before a Chinese soldier armed with a bayonet.

5. Plaintiff Cowart acted in several camp plays. One play mocked the various United Nations. Other plays depicted that the use of a germ warfare bomb and the use of an atomic bomb benefited capitalists, that civilians were being coerced to join the American Army. In another play, he portrayed an American POW who was being treated well by the Chinese while other American soldiers were stupidly fighting in foxholes. Another play satirized President Truman and General Ridgeway, at the end of which the actors, including Cowart said "Down With the United States".

6. Plaintiff Cowart wore a Chinese uniform, the Peace Dove Medal and the Stalin Badge. He informed on POW infractions or actions, for which they were later punished. He reported to the Chinese that POWs had stolen food from the Chinese warehouse, that certain POWs made anti-communist remarks, that he (Cowart) had been beaten by POWs, that certain POWs were either not studying the propaganda given to them or were not giving the correct answers in the forced study group meetings, that a POW was planning to escape, that certain POWs had torn up slogans and pictures in the Progressives' Study Club Room.

7. Plaintiff Cowart consorted with the Chinese running the prisoner of war camps, attended Chinese parties, walked [fol. 23] and talked with Chinese officers, guards and interpreters, and lived for some time at the Chinese regimental headquarters. He was given special privileges, e.g., better rations, quarters, no work details, and was allowed to make purchases at the Chinese post-exchange in Pyong-yang.

8. Plaintiff Cowart stated that he believed in Communism; that any thinking person would adopt Communism, that he hated America; that its Government should be overthrown; that he desired to study in China and return to the United States in five years to help in the overthrow of the Government, which was inevitable; that the American Government was fascist, similar to the German Government. He wrote a letter to Mao Tse Tung in which he stated his belief in Communism, criticized the American economic and educational systems, asked for the opportunity to study in China and join the Communist party, and gave thanks for the kind treatment accorded him by the Chinese.

9. The Korean armistice was signed July 27, 1953, and prisoner repatriation began August 5, 1953, at Panmunjon. Plaintiff Cowart refused repatriation and voluntarily elected to go to Communist China. After going to Communist China he voluntarily attended a Communist indoctrination school at Taiyuan, China, where Communist ideology was taught, for seven months. On January 23, 1954, plaintiff Cowart was dishonorably discharged from



the United States Army. In July 1955, he returned to the United States.

*Re: Lewie W. Griggs*

1. Plaintiff Griggs enlisted in the United States Army on August 4, 1949. On April 25, 1951, he was captured with other United States soldiers by the Chinese Communist forces in Korea. At the time of his capture, he was a Private [fol. 24] First Class. Upon capture, he was confined in Prisoner of War Camp 1.

2. Plaintiff Griggs was a monitor in the forced study group meetings in the prisoner of war camp wherein he led the discussions after he had lectured on Communism. He was also a member of the Voluntary Study Group which he attended regularly with other so-called Progressives. He was a member of the Peace Committee which drew up, signed and circulated peace petitions. He attempted to influence and persuade POWs to join the Voluntary Study Group and Peace Committee, to sign petitions, and to follow Communistic doctrines. He wore a "Peace Dove" Medal, and also wore a black arm band, at Stalin's death. As a member of the Permanent Peace Committee he wore a cloth inscribed with Chinese writing on his chest.

3. Plaintiff Griggs was a member of a Kangaroo Court invoking punishments on POWs for infractors. He appeared as a witness against a POW and signed his name to the charges. A POW, after being released from a cellar by the Chinese, was returned to the cellar at the suggestion of the Peace Committee on which plaintiff Griggs served. He recommended to the Chinese various punishments to be meted out to POWs for breaking rules, while other squad members stated that nothing should be done. He informed on POWs. He revealed names to the Chinese of POWs who led a mass exodus from a Communist entertainment show. He disclosed to the Chinese the name of a POW who had planned to escape. As monitor, he disclosed the names of those who criticized Communism or refused to study Communistic literature, and revealed the names of POWs who had stolen food and tobacco from the Chinese warehouse.

[fol. 25] 4. Plaintiff Griggs made recordings for the Chinese radio, which were also sent out over the camp public address system. Round table discussions of the so-called Progressives, in which plaintiff participated, were recorded and broadcast. He spoke over the camp public address system. The subjects of these recordings and broadcasts were, that atrocities had been committed by American troops; that the American Government should be overthrown; that the Korean war was the fault of the United States. One of the recordings, which was directed to plaintiff's mother and played back over the public address system, requested that his mother join organizations for peace and persuade President Truman to withdraw troops from Korea. As a member of the Peace Committee, he drew up, signed and circulated peace petitions which urged the cessation of war and the use of bombs and germ warfare by the United States. He signed surrender leaflets and letters addressed to his friends which were dropped behind United Nations lines. These letters and leaflets urged surrender and described the good treatment provided by the Chinese.

5. Plaintiff Griggs wrote propaganda articles to which he signed his own name or unauthorizedly signed the name of another POW. These articles were published in *Towards Truth and Peace* and in other camp publications. In these articles he urged that the United States should cease fighting; declared that the United States used germ warfare and committed atrocities; and stated that the Chinese were good friends. He delivered speeches to groups of POWs to the effect that he and a committee had read confessions of American Air Force officers as to the use of bacteriological warfare and that he (Griggs) believed the confessions. He wrote letters to various groups and individuals in the United States urging them to write to the Government re- [fol. 26] questing peace. He uttered pro-Communist and anti-American statements, e.g., that the United States was the aggressor, a war-monger; that American capitalists in control of the Government started the Korean war; that if he were given a weapon he would fight the United Nations' forces; that the United States used germ warfare; that the study of Communism was beginning to make sense to him;



that he believed in Communism; that the Chinese were right in embracing Communism; that when he returned to the United States it would be Communistic and he would be a hero; that the whole world would be dominated by Communism in ten years and that individuals similar to him would be leaders; that he would join the Communist party when he returned to the United States; that he would sell out the United States for a tailor-made cigarette.

6. Plaintiff Griggs consorted with the Chinese in the prisoner of war camp, attended enemy parties, visited Chinese headquarters frequently, walked and talked with enemy officers and interpreters, and called or referred to the Chinese as "comrades". He was accorded special privileges in that he received better food, drink, medical treatment, had freedom of the camp and did not have to go out on work details.

7. The Korean armistice was signed July 27, 1953, and prisoner repatriation began August 5, 1953, at Panmunjon. Plaintiff refused repatriation and voluntarily elected to go to Communist China. He signed letters prepared by the Chinese addressed to the families of Edward Dickenson and Claude Dickenson. In these letters plaintiff declared the imprisonment of these two men was unjust. He attended a Communist indoctrination school at Taiyuan, China, for [fol. 27] six months. He was assigned to a state farm in the Yellow River Valley, China, and later was transferred to a factory at Kaifeng until his return to the United States. On January 23, 1954, plaintiff Griggs was dishonorably discharged from the United States Army. He returned to the United States in July 1955. On his return he stated that he returned to the United States because China was a slave state and because having a job, going to school, taking vacations and having a family and hobbies were practically out of reach in China.

#### *General*

1. At the time of his capture, each plaintiff was a Private First Class in the Army of the United States. After each plaintiff was captured and before each plaintiff refused

repatriation and elected to go to Communist China, the Department of the Army took routine administrative action to reflect a change in each plaintiff's records to show them as Corporals as of May 1, 1953.

2. Plaintiffs have received no pay for the period from the date each was captured to January 23, 1954, the date each was dishonorably discharged, except amounts advanced by the Army for insurance and allotments for the dependents of each plaintiff. The amounts so advanced are shown on the Army's pay records of each plaintiff. The trial of this case is to be limited to the issues of law and fact relating to the right of each plaintiff to recover, under Rule 38(c). If any plaintiff is, or if all plaintiffs are, entitled to recover in this action, the amount or amounts, subject to offsets, will be determined by the General Accounting Office, in conjunction with the Army, or by further proceedings, if the [fol. 28] Court so orders. If plaintiffs, or any one of them, are not entitled to recover in this action, and if defendant is entitled to recover on its counterclaim, the amount to be recovered by defendant on its counterclaim will be determined by the General Accounting Office, in conjunction with the Army, or by further proceedings, if the Court so orders.

Robert E. Hannon, Attorney for Plaintiffs.

George Cochran Doub, Assistant Attorney General,  
Civil Division; Francis X. Daly, Sheldon J. Wolfe,  
Attorneys, Civil Division, Department of Justice.

[fol. 29] [File endorsement omitted]

[fol. 30]

IN THE UNITED STATES COURT OF CLAIMS

No. 547-56

[Title omitted]

STIPULATION OF DAMAGES IF PLAINTIFFS, OR ANY OF THEM,  
ARE ENTITLED TO RECOVER AS MATTER OF LAW

1. This case has been tried on the merits and proof has been closed.

2. The Honorable C. Murray Bernhardt, the Commissioner of this Court, who heard this case, has advised both parties that he will reopen proof momentarily for the purpose of receiving a stipulation as to damages (should the Court as matter of law decide that plaintiffs, or any of them, are entitled to recover) if the parties can reach agreement as to the amount of possible damages.

3. It is hereby agreed by and between the parties hereto, by their respective attorneys, that, if this Court decides that the plaintiffs, or any of them are entitled to recover as matter of law the net amount damage suffered by each plaintiff by reason of the allegations in the petition is as follows:

[fol. 31]

Otho G. Bell .....	\$1,455.29
William A. Cowart .....	4,991.13
Lewie W. Griggs .....	2,810.14

Robert E. Hannon, Attorney for Plaintiffs.

George Cochran Doub, Assistant Attorney General,  
Civil Division; Francis X. Daly, Attorney, Civil  
Division, Department of Justice.

[fol. 33]

EXHIBIT "9" TO COMMISSIONER'S REPORT

[Stamp—Original]

[Handwritten notation—Z-166290 4 mlt]

RECEIPT AND PROMISE TO REPAY FUNDS ADVANCED  
AS FINANCIAL ASSISTANCE LOANS FOR  
SUBSISTENCE AND REPATRIATION

Hong Kong, B.C.C., July 11, 1955

I, William A. Cowart, have today received from the American Consulate General, Hong Kong, B.C.C., the sum of \$359.79 United States currency which I promise to repay without interest to the Treasurer of the United States upon demand, in legal tender of the United States.

That sum includes \$4.79 for my subsistence for the period from July 10, 1955 to July 11, 1955 at the rate of \$ \_\_\_\_\_ monthly and \$355.00 for my repatriation. It also includes amounts for the dependent American members of my family or for extraordinary expenses in detail as follows:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Stamp—Jan 3 1957; Initialed—BB]

I understand that my obligation to repay the sum herein stated will not be discharged until the Treasurer of the United States actually receives in legal tender of the United States full repayment of that sum.

I further understand and agree that after my repatriation I will not be furnished a passport for travel abroad until my obligation to reimburse the Treasurer of the United States is liquidated.

/s/ WILLIAM A. COWART  
William A. Cowart

Local address:

Prince Hotel, 377 Prince Edward Road, Kowloon, Hong Kong.

Address in the United States:

401 West McCloy St., Montecello, Arkansas.

Witness: /s/ S. M. BACKE  
S. M. Backe  
American Consul  
American Consulate General  
Hong Kong

[Stamp—Received—Dec 5—1956—GAO Claims Division]

*to Commissioner's Report*

## Send statements to:

### Account of

COWART, William A

16-55501 U. S. GOVERNMENT PRINTING OFFICE

PREVIOUS BALANCE	AUTH. NO.	DATE	CODE	REF. NO.	DESCRIPTION	DEBIT	CREDIT	BALANCE
		AUG 22-55	705	59	SUBSISTENCE X TRANSPORTATION 7-11-55	359.79		359.79

33877  
BILLS

1st 8-22-55

2nd 11-15-55

3rd 1-24-56

4th 4-11-56 note

33877  
BILLS

5th 8-22-56 2nd note

6th \_\_\_\_\_

7th \_\_\_\_\_

2

2

[fol. 35]

[File endorsement omitted]

[fol. 36]

## IN THE UNITED STATES COURT OF CLAIMS

## PLAINTIFFS' REQUESTED FINDINGS OF FACT—

Filed July 9, 1959

The above entitled cause came on for hearing on the 4th day of May, 1959, before the Honorable C. Murray Bernhardt, Commissioner, United States Court of Claims, in the City Council Chambers Few Memorial Hall of Records, Pacific and Madison Streets, Monterey, California, Robert E. Hannon appearing as Counsel for plaintiffs and Francis X. Daly appearing as Counsel for the defendant, and the Commissioner having heard the testimony and having examined the proofs offered by the respective parties, and the evidence in the case having been closed, the plaintiff now requests that the following facts be found, to wit:

1. That the plaintiffs Otho G. Bell, William A. Cowart, and Lewie W. Griggs were citizens of the United States at the time of their respective enlistments in the United States Army. (R. 2)

[fol. 37] 2. That the plaintiffs, Otho G. Bell, William A. Cowart, and Lewie W. Griggs are now and at all times since the date of their respective enlistments in the United States Army have been citizens of the United States.

3. That the plaintiff, Otho G. Bell, enlisted in the United States Army on January 29, 1949 (Stipulation of Facts P-1).

4. That the plaintiff, William A. Cowart, enlisted in the United States Army on January 7, 1949 (Stipulation of Facts P-7).

5. That the plaintiff, Lewie W. Griggs, enlisted in the United States Army on August 4, 1949 (Stipulation of Facts P-10).

6. That the plaintiff Otho G. Bell was captured by the Chinese communist forces in Korea on November 30, 1950. (Stipulation of Facts P-1A).



7. That the plaintiff William A. Cowart was captured by the North Korean forces in Korea on July 12, 1950. (Stipulation of Facts P-7).

8. That the plaintiff Lewie W. Griggs was captured by the Chinese communist forces in Korea on April 25, 1951. Stipulation of Facts P-10.

9. That the plaintiff Otho G. Bell was a Private First Class in the United States Army at the time of his capture. (Stipulation of Facts P-1A).

[fol. 38] 10. That the plaintiff William A. Cowart was a Private First Class in the United States Army at the time of his capture. (Stipulation of Facts P-7).

11. That the plaintiff Lewie W. Griggs was a Private First Class in the United States Army at the time of his capture. (Stipulation of Facts P-10-11).

12. That on May 1, 1953 each of the plaintiffs was promoted to the rank of Corporal in the United States Army. (Stipulation of Facts P-14).

13. That the plaintiff Otho G. Bell was dishonorably discharged from the United States Army on January 23, 1954. (Stipulation of Facts P-7).

14. That the plaintiff William A. Cowart was dishonorably discharged from the United States Army on January 23, 1954. (Stipulation of Facts P-10).

15. That the plaintiff Lewie W. Griggs was dishonorably discharged from the United States Army on January 23, 1954. (Stipulation of Facts P-14).

16. That each of the plaintiffs was confined as a prisoner of war from the date of his capture until the date of his dishonorable discharge.

17. That none of the plaintiffs have received any pay for the period from the date each was captured to January-23, 1954, the date each was dishonorably discharged, except amounts advanced by the Army for insurance and allotments for the dependents of each plaintiff. (Stipulation of Facts P-14).

[fol. 39] 18. That each of the plaintiffs was a member of the United States Army from the date of his enlistment to the date of his Dishonorable Discharge.

19. That the net amount of pay due to the plaintiff, Otho G. Bell, from the defendant is the sum of One Thousand Four Hundred Fifty-five Dollars and Twenty-nine Cents (\$1,455.29) (Stipulation of Damages if Plaintiffs, or any of them, are Entitled to Recover as Matter of Law).

20. That the net amount of pay due to the plaintiff, William A. Cowart, from the defendant is the sum of Four Thousand Nine Hundred and Ninety-one Dollars and Thirteen Cents (\$4,991.13) (Stipulation of Damages if Plaintiffs, or any of them, are Entitled to Recover as Matter of Law).

21. That the net amount of pay due to the plaintiff, Lewie W. Griggs, from the defendant is the sum of Two Thousand Eight Hundred Ten Dollars and Fourteen Cents (\$2,810.14) (Stipulation of Damages if Plaintiffs, or any of them, are Entitled to Recover as Matter of Law).

Respectfully submitted,

Robert E. Hannon, Attorney for Plaintiffs.

[fol. 40] [File endorsement omitted]

[fol. 41]

#### IN THE UNITED STATES COURT OF CLAIMS

#### PLAINTIFFS' OBJECTIONS TO DEFENDANT'S PROPOSED FINDINGS OF FACT—Filed August 7, 1959

The plaintiffs having read and considered the defendant's proposed findings of fact filed in the above entitled matter hereby object to the following portions of the said defendant's proposed findings of fact.

1. As to that portion of the defendant's proposed findings of fact which relate to the plaintiff Bell, the plaintiffs object to paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, with the exception of that sentence in paragraph 11 on page 7 of said findings, which reads, "On January 23, 1954, plaintiff Bell was dishonorably discharged from the United



States Army.", to which sentence the plaintiffs do not object.

2. As to that portion of the defendant's proposed findings of fact relating to the plaintiff Cowart, the plaintiffs object to paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9, with the exception of that portion of paragraph 1, commencing on [fol. 42] page 7 of said proposed findings which reads, "Plaintiff Cowart enlisted in the United States Army on January 7, 1949. On July 12, 1950 he was captured in combat by North Korean forces in Korea with other United States soldiers. At the time of his capture he was a Pvt. First Class.", to which portion the plaintiffs do not object, and except that portion of paragraph 9 on page 11 of said proposed findings which reads, "On January 23, 1954 plaintiff Cowart was dishonorably discharged from the United States Army.", to which sentence the plaintiffs do not object.

3. As to that portion of the plaintiffs' proposed findings of fact relating to the plaintiff Griggs, the plaintiffs object to paragraphs 2, 3, 4, 5, 6 and 7 of said proposed findings with the exception of that portion of paragraph 7 on page 15 of said findings which reads, "On January 23, 1954, plaintiff Griggs was dishonorably discharged from the United States Army.", to which sentence the plaintiffs do not object.

4. As to that portion of the plaintiffs' proposed findings of fact which is entitled, "General", the plaintiffs object to paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, with the exception of that portion of paragraph 18 on page 21 of said proposed findings which reads, "At the time of his capture, each plaintiff was a Pvt. First Class in the Army of the United States. After [fol. 43] each plaintiff was captured . . . the department of the Army took routine administrative action to reflect a change in each plaintiff's records to show them as Corporals as of May 1, 1953.", to which portions the plaintiffs do not object.

5. The plaintiffs' objection to each and all of the above objected-to-facts is made and based upon the grounds that

each and all of such objected-to-facts are immaterial and irrelevant to the issues involved in this case.

*White vs. United States* (1931) 72 Court of Claims 459

Respectfully submitted,

Robert E. Hannon, Attorney for Plaintiffs.

[fol. 44]

IN THE UNITED STATES COURT OF CLAIMS

No. 547-56

OTHO G. BELL (1), WILLIAM A. COWART (2),  
LEWIE W. GRIGGS (3), Plaintiffs,

vs.

THE UNITED STATES, Defendant.

PLAINTIFFS' EXCEPTIONS TO COMMISSIONER'S REPORT

The plaintiffs having read and considered the report of the commissioner filed in the above entitled matter hereby except to the following portion of said report.

1. Plaintiffs except to paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 31, 32 and 33.

2. Plaintiffs except to all of paragraph 16 with the exception of that portion of said paragraph which reads, "On January 23, 1954, plaintiff Bell was dishonorably discharged from the United States Army. He returned to the United States in July, 1955.", to which sentence the plaintiffs do not object.

[fol. 45] 3. Plaintiffs except to all of paragraph 24 with the exception of that portion of paragraph 24 which reads, "On January 23, 1954, plaintiff Cowart was dishonorably discharged from the United States Army. In July, 1955, he returned to the United States.", to which portion the plaintiffs do not except.

4. The plaintiffs except to all of paragraph 30 with the exception of that portion of paragraph 30 which reads, "On January 23, 1954, plaintiff Griggs was dishonorably discharged from the United States Army. He returned to the United States in July, 1955.", to which portion of said paragraph the plaintiffs do not except.

5. The plaintiffs except to that portion of the first sentence of paragraph 34 which reads, "and before each plaintiff refused repatriation and elected to go to Communist China,". Plaintiffs do not except to the remainder of paragraph 34.

6. The plaintiffs' exception to each and all of the above excepted to facts is made and based upon the grounds that each and all of such excepted to facts are immaterial and irrelevant to the issues involved in this case.

Respectfully submitted,

Robert E. Hannon, Attorney for Plaintiffs.

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[fol. 46] MINUTE ENTRY OF ARGUMENT AND SUBMISSION—  
January 20, 1960 (omitted in printing).

[fol. 47]

IN THE UNITED STATES COURT OF CLAIMS

No. 547-56

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OTHO G. BELL, et al.

v.

THE UNITED STATES.

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ORDER RE CLAIMS AND DENIAL THEREOF—  
January 25, 1960

This case comes before the court for the purpose set out below on its own motion pursuant to Rule 27 (28 U.S.C. 2507).

It appearing in paragraph 7 of the petition that the plaintiffs made claims and demands upon the Army for the subject pay and allowances which claims and demands were denied in writing by the Department of the Army on October 2, 1956.

It Is Therefore Ordered this twenty-fifth day of January, 1960, that the Department of the Army be and the same is requested to file with the Clerk of this court within 10 days hereof copies of the above referred to claims and demands, together with a copy or copies of the Department of the Army's denial thereof.

By the Court

Marvin Jones, Chief Judge.

[fol. 47A] [File endorsement omitted]

[fol. 48]

HAROLD C. BROWN  
SAN FRANCISCO 5

YUkon 6-3676

November 8, 1955

Chief of Finance  
Department of the Army  
Washington, D. C.

Dear Sir:

Re: Otho G. Bell	Serial No. RA 18276618
Lewie W. Griggs	Serial No. RA 18322825
William A. Cowart	Serial No. RA 14313076

Enclosed herewith please find letter directed to the Controller General of the United States, which is self-explanatory. We see no reason why this matter should be forwarded to the Controller General and why you should not forthwith pay the three above named men, who have now been discharged from custody by the United States Army, all of their back-pay, prisoner of war allowances.

These men have requested that these drafts be forwarded to this office so that we may distribute the same to them. There have been many expenses incurred during our representation of these men and they desire us to see that all bills are paid.

Very truly yours,

HAROLD C. BROWN AND GEORGE T. DAVIS

SIGNED

By .....

We authorize and direct you to follow the instructions as set forth above.

WILLIAM A. COWART SIGNED

LEWIE W. GRIGGS SIGNED

OTHO G. BELL SIGNED

TRUE COPY

[fol. 48A] [File endorsement omitted]

[fol. 49]

HEADQUARTERS  
DEPARTMENT OF THE ARMY  
OFFICE OF THE CHIEF OF FINANCE  
Washington 25, D. C.

FINEM 330.3 (14 Sep 56) General

2 October 1956

Mr. Harold C. Brown  
Attorney at Law  
605 Market Street  
San Francisco 5, California

Dear Mr. Brown:

Further reference is made to your inquiries concerning the claims of Otho G. Bell, Lewie W. Griggs, and William A. Cowart.

I have been advised that the following determinations have been made regarding the status of all United States

Army Voluntary Non-Repatriates who elected not to accept repatriation to United States control under the terms of the Korean Armistice Agreement prior to 23 January 1954:

a. That all Voluntary Non-Repatriates who refused to elect repatriation prior to 23 January 1954, under the terms of the Korean Armistice Agreement have, as demonstrated by their refusal to elect repatriation to the United States and their records as prisoners of war, adopted, adhered to or supported the aims of Communism, one of which is the overthrow of all non-Communist governments, including the Government of the United States, by force or violence.

b. That all Voluntary Non-Repatriates who refused to elect repatriation prior to 23 January 1954 under the terms of the Korean Armistice Agreement now advocate, or are members of an organization which advocates, the overthrow of the United States Government by force or violence.

c. That all Voluntary Non-Repatriates who refused to elect repatriation prior to 23 January 1954 under the terms of the Korean Armistice Agreement advocated, or were members of an organization which advocated, during the period from the date of their capture in Korea through the date of their Dishonorable Discharge from the Army, the overthrow of the United States Government by force or violence.

d. That such persons are not entitled to the payment of salary or wages for the period beginning with their respective dates of capture through the date they were given Dishonorable Discharges.

[fol. 50] The claims of Otho G. Bell, Lewie W. Griggs, and William A. Cowart may not, therefore, be favorably considered.

Sincerely yours,

SIGNED

H. W. CRANDALL  
Major General, USA  
Chief of Finance

TRUE COPY

[fol 51]

## IN THE UNITED STATES COURT OF CLAIMS

No. 547-56

(Decided March 2, 1960)

OTHO G. BELL (1), WILLIAM A. COWART (2),  
LEWIE W. GRIGGS (3),

v.

THE UNITED STATES.

Mr. Robert E. Hannon, for the plaintiffs.

Mr. Francis X. Daly, with whom was Mr. Assistant Attorney General George Cochran Doub, for the defendant.  
Mr. Sheldon J. Wolfe was on the brief.

## OPINION—March 2, 1960

JONES, *Chief Judge*, delivered the opinion of the court:

The plaintiffs sue for pay and allowances which they claim to be due them as prisoners of war from the dates of capture in 1950 and 1951 until their discharge from the Army on January 23, 1954.

They had enlisted in the United States Army at different dates in 1949. At the time of their capture they were privates, first class.

The applicable statutes are set out in the footnote.<sup>1</sup> The plaintiffs claim that from the date of their capture until

<sup>1</sup> 50 U.S.C. App. § 1002 (1952) provides as follows:

"Any person who is in active service and who is officially determined to be absent in a status of missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered or besieged shall, for the period he is officially carried or determined to be in any such status, be entitled to receive or to have credited to his account the same pay and allowances to which he was entitled at the beginning of such period of absence or may become entitled thereafter, and entitlement to pay and allowances shall terminate upon the date of receipt by the department con-



[fol. 52] their actual discharge they were entitled under the statutes to the regular pay and allowances of soldiers of their classification.

cerned of evidence that the person is dead or upon the date of death prescribed or determined under provisions of section 5 of this Act [section 1005 of this Appendix]: *Provided*, That such entitlement to pay and allowances shall not terminate upon expiration of term of service during absence and in case of death during absence shall not terminate earlier than the dates herein prescribed: *Provided further*, That there shall be no entitlement to pay and allowances for any period during which such person may be officially determined absent from his post of duty without authority and he shall be indebted to the Government for any payments from amounts credited to his account for such period."

50 U.S.C. App. § 1006 (1952) provides as follows:

"When it is officially reported by the head of the department concerned that a person missing under the conditions specified in section 2 of this Act [section 1002 of this Appendix] is alive and in the hands of a hostile force or is interned in a foreign country, the payments authorized by section 3 of this Act [section 1003 of this Appendix] are, subject to the provisions of section 2 of this Act [section 1002 of this Appendix], authorized to be made for a period not to extend beyond the date of the receipt by the head of the department concerned of evidence that the missing person is dead or has returned to the controllable jurisdiction of the department concerned. When a person missing or missing in action is continued in a missing status under section 5 of this Act [section 1005 of this Appendix], such person shall continue to be entitled to have pay and allowances credited as provided in section 2 of this Act [section 1002 of this Appendix] and payments of allotments, as provided in section 3 of this Act [section 1003 of this Appendix], are authorized to be continued, increased, or initiated."

50 U.S.C. App. § 1009 (1952) provides as follows:

"The head of the department concerned, or such subordinate as he may designate, shall have authority to make all determinations necessary in the administration of this Act [sections 1001-1012 and 1013-1016 of this Appendix], and for the purposes of this Act [said sections], determinations so made shall be conclusive as to death or finding of death, as to any other status dealt with by this Act [said sections], and as to any essential date including that upon which evidence or information is received in such department or by the head thereof. The determination of the head of the department concerned, or of such subordinate as he may designate, shall be conclusive as to whether information



The defendant alleges in the pleadings and it is not denied by the plaintiffs that they were among prisoners who were captured; that these three refused to be repatriated and return to the United States when they were released from prison; that instead they chose to remain

received concerning any person is to be construed and acted upon as an official report of death. When any information deemed to establish conclusively the death of any person is received in the department concerned, action shall be taken thereon as an official report of death, notwithstanding any prior action relating to death or other status of such person. If the twelve months' absence prescribed in section 5 of this Act [section 1005 of this Appendix] has expired, a finding of death shall be made whenever information received, or a lapse of time without information, shall be deemed to establish a reasonable presumption that any person in a missing or other status is no longer alive. Payment or settlement of an account made pursuant to a report, determination, or finding of death shall not be recovered or reopened by reason of a subsequent report or determination which fixes a date of death except that an account shall be reopened and settled upon the basis of any date of death so fixed which is later than that used as a basis for prior settlement. Determinations are authorized to be made by the head of the department concerned, or by such subordinate as he may designate, of entitlement of any person, under provisions of this Act [sections 1001-1012 and 1013-1016 of this Appendix], to pay and allowances, including credits and charges in his account, and all such determinations shall be conclusive: *Provided*, That no such account shall be charged or debited with any amount that any person in the hands of a hostile force may receive or be entitled to receive from, or have placed to his credit by, such hostile force as pay, wages, allowances, or other compensation: *Provided further*, That where the account of any person has been charged or debited with allotments paid pursuant to this Act [said sections] any amount so charged or debited shall be recredited to such person's account in any case in which it is determined by the head of the department concerned, or such subordinate as he may designate, that payment of such amount was induced by fraud or misrepresentation to which such person was not a party. When circumstances warrant reconsideration of any determination authorized to be made by this Act [said sections] the head of the department concerned, or such subordinate as he may designate, may change or modify a previous determination. Excepting allotments for unearned insurance premiums, any allotments paid from pay and allowances of any person for the period of the person's entitlement under the provisions of section 2 of this Act [section 1002 of this Appendix] to receive or have credited

[fol. 53] with the Communists and in a communist country; that between the time of the plaintiffs' capture and the time of their dishonorable discharge each plaintiff adhered to, worked for, and collaborated with the enemy of the United States; that since they refused repatriation when they were released from prison and since they continued in their election until January 23, 1954, they were on that date dishonorably discharged from the Army.

[fol. 54] These allegations are nowhere disputed.

The defendant asserts that because of these admitted facts the plaintiffs were guilty of a breach of the contracts

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such pay and allowances shall not be subject to collection from the allottee as overpayments when payment thereof has been occasioned by delay in receipt of evidence of death, and any allotment payments for periods subsequent to the termination, under this Act [sections 1001-1012 and 1013-1016 of this Appendix] or otherwise, of entitlement to pay and allowances, the payment of which has been occasioned by delay in receipt of evidence of death, shall not be subject to collection from the allottee or charged against the pay of the deceased person. The head of the department concerned, or such subordinate as he may designate, may waive the recovery of erroneous payments or overpayments of allotments to dependents when recovery is deemed to be against equity and good conscience. In the settlement of the accounts of any disbursing officer credit shall be allowed for any erroneous payment or overpayment made by him in carrying out the provisions of this Act [sections 1001-1012 and 1013-1016 of this Appendix], except sections 13, 16, 17, and 18 [sections 1013 and 1016, and former sections 1017, 1018 of this Appendix], in the absence of fraud or criminality on the part of the disbursing officer involved, and no recovery shall be made from any officer or employee authorizing any payment under such provisions in the absence of fraud or criminality on his part."

10 U.S.C. § 846 (1952) provides as follows:

"Every noncommissioned officer and private of the Regular Army, and every officer, noncommissioned officer, and private of any militia or volunteer corps in the service of the United States who is captured by the enemy, shall be entitled to receive during his captivity, notwithstanding the expiration of his term of service, the same pay, subsistence, and allowance to which he may be entitled, while in the actual service of the United States; but this provision shall not be construed to entitle any prisoner of war of such militia corps to any pay or compensation after the date of his parole, except the traveling expenses allowed by law. (R.S. § 1288.)"

of enlistment and of their oaths of faithful service; and that therefore each plaintiff abandoned his status as a soldier in the United States Army and forfeited all pay and allowances to which he might have been entitled otherwise.

The undisputed testimony shows that during the period of their confinement each of the three plaintiffs became monitors for the "forced study groups," the sessions of which the prisoners were compelled to attend. Armed guards attended these sessions. The programs included lectures picturing what were declared to be the bad aspects of life in the United States as contrasted with idyllic life under communism. As monitors, they procured and distributed propaganda literature, and threatened to turn in names of any prisoners who refused to read and discuss favorably these propaganda handouts.

Each of the plaintiffs made tape recordings which were used as broadcasts and over the camp public address system. Each of them wore Chinese uniforms and were permitted to attend meetings outside the camp. The details of the plaintiffs' consorting, fraternizing and cooperating with their captors and the devious ways in which they sought favors for themselves, thus causing hardship and suffering to the other prisoners, are set out in our findings 7 to 30, inclusive.

Two of Bell's recordings were broadcast over the Peiping radio, stating among other things that on the orders of his platoon leader, his men had killed North Korean prisoners of war, and that President Truman was a war monger. In written articles for the camp newspaper he alleged that American troops had committed atrocities and he personally had been ordered to kill women and children and not to take prisoners of war, and that if given the opportunity he would run a tank over the President's body.

Bell was paid money to write these articles. He also delivered lectures before his company and to the camp on American aggression. He appeared voluntarily in a motion picture and appeared in bi-monthly plays. He stated that if given a weapon he would fight against the United States. [fol. 55] He sold food intended for the sick to other prisoners of war. By making reports to the Chinese, he caused

one man to be bayoneted and others to be placed in solitary confinement.

Cowart did many similar things, wrote propaganda articles accusing American soldiers of atrocities and of using germ warfare. He drew posters and cartoons for the enemy, acted in plays, walked and talked with the Chinese officers, guards and interpreters, lived part of the time at Chinese regimental headquarters, stated he hated America, desired to study in China and to return to the United States in five years to help in the overthrow of the government.

Griggs did many similar things, attended enemy parties, visited Chinese headquarters frequently, referred to the Chinese as comrades, was accorded special privileges, made broadcasts, signed leaflets, wrote articles accusing the American soldiers of atrocities and declared the United States had used germ warfare.

These and many other acts of perfidy are abundantly proved by the record and are nowhere denied either in the pleadings or in the evidence. The record does not disclose any suggestion whatever of brainwashing. As a matter of fact, the record justifies the conclusion that at all times these men did these acts voluntarily for the purpose of helping themselves, in complete disregard of the effect it might have on the treatment of their fellow prisoners. The record does not indicate a touch of loyalty either to their compatriots or to their country after the period they were taken prisoners of war.

The defendant produced at the trials as witnesses certain Army staff officers who testified authoritatively that the United States did not authorize the use of germ warfare in Korea, did not ship any materials or equipment to Korea for that purpose, and received no requests for such materials or equipment. Rather than have this testimony remain in the record as evidence, the plaintiffs' counsel stipulated that neither the United States nor any of the United Nations' forces engaged in germ warfare in Korea. In view of this stipulation and concession, the commissioner sustained plaintiffs' objection to this part of defendant's testimony but permitted it to remain in the record as defendant's offer of proof under Rule 41(c).

[fol. 56] In reference to plaintiff Bell's statement, as shown in finding 14, that the American troops had injected poison gas into the blood of communist prisoners of war on a ship, plaintiffs' counsel stipulated at the trial that this had not been done.

After the Korean armistice, which was signed July 27, 1953, and prisoner repatriation had begun on August 5, 1953, each of the plaintiffs refused repatriation and voluntarily elected to go to Communist China. After the plaintiffs were discharged on January 23, 1954, they filed this suit for their pay during the period indicated.

R.S. 1288, 10 U.S.C. § 846, *supra*, was enacted in 1814. Numerous statutes have been enacted and committee reports made since that time. These latter statutes, including sections 1002, 1006, and 1009, *supra*, of the legislation entitled the Missing Persons Act, as amended, cover the cases here presented. In fact, not only the language of the acts themselves, but the committee reports at the time these sections were enacted clearly show that but for this Missing Persons Act there would be no basis of a claim for compensation.<sup>2</sup>

It will be noted that section 1002, as quoted in the footnote, states in effect that any person determined to be "interned in a foreign country, captured by a hostile force, beleaguered or besieged shall, for the period he is officially carried or determined to be in any *such status*, be entitled" to pay and allowances. (Emphasis supplied.) Section 1006 states in effect that when it is officially reported that a person missing under the conditions specified is alive and *in the hands of a hostile force or is interned in a foreign country* he shall be paid.

Section 1009, which is a part of the same Act, states that "the head of the department concerned, or such subordinate as he may designate, shall have authority to make all determinations necessary in the administration of this Act, and for the purposes of this Act determinations so made shall be conclusive as to death or finding of death, as to

<sup>2</sup> See committee report, U.S. Cong. & Adm. News, 83d Cong., 1st Sess., 1953, p. 1344.



any other status dealt with by this Act : . . . Determinations are authorized to be made by the head of the department concerned, or by such subordinate as he may designate, of [fol. 57] entitlement of any person, under provisions of this Act, to pay and allowances . . . When circumstances warrant reconsideration of any determination authorized to be made of this Act the head of the department concerned, or such subordinate as he may designate, *may change or modify a previous determination.*" (Emphasis supplied.)

This modification in the language of the law completely changes the original act, which was unconditional. These changes in the original act leave not the slightest doubt that it was the intention of the Congress to authorize the head of the department or his agent to determine not only the status but the entitlement to pay.

It is inconceivable that the plaintiffs should be paid in the circumstances disclosed by the undisputed facts in this record. The fact is that essentially they were not confined. They were permitted to go outside the camp, were given practical freedom and in the essence of things they were no longer in the status of prisoners.

The Department, in denying plaintiffs' claims, which were filed with the Department for pay, necessarily determined under the provisions and authority of the statute just quoted that during the period involved these plaintiffs did not have a status as prisoners, and were not entitled to pay under the quoted statutes. It was determined under the provisions of section 1009, quoted above, that they were not entitled to their pay. Such a finding was implicit in a determination that they should not be paid for the period following capture. This determination is fully supported by the record made here.<sup>3</sup>

<sup>3</sup> The Army in denying payment of plaintiffs' claims stated in part as follows:

"I have been advised that the following determinations have been made regarding the status of all United States Army Voluntary Non-Repatriates who elected not to accept repatriation to United States control under the terms of the Korean Armistice Agreement prior to 23 January 1954:

"a. That all Voluntary Non-Repatriates who refused to elect repatriation prior to 23 January 1954, under the terms of the



It is almost incredible that these men would ask for pay in light of the conduct disclosed by the record.

[fol. 58] In arriving at the intent of the Congress, it is necessary to construe all the provisions of the law together even if sometimes it seems not to be in strict accord with certain specific provisions when they are lifted from the body of the law and read out of context. *Luna v. United States*, 124 C. Cls. 52 (1952); *Olney v. United States*, 123 C. Cls. 285 (1952); *United States v. Kirby*, 74 U.S. 482 (1868); and *Heydenfeldt v. Daney Gold etc. Co.*, 93 U.S. 634 (1876), from which we quote, at page 638, the following:

It is true that there are words of present grant in this law; but, in construing it, *we are not to look at any single phrase in it, but to its whole scope*, in order to arrive at the intention of the makers of it. . . . If a literal interpretation of any part of it would operate unjustly, or lead to absurd results, or be contrary to the evident meaning of the act taken as a whole, it should be rejected. There is no better way of discovering its true meaning, when expressions in it are rendered ambiguous by their connection with other clauses, than by considering the necessity for it, and the causes which induced its enactment. (Emphasis supplied.)

The *Kirby* case involved an indictment of a sheriff and his posse under a statute which prohibited a willful obstruction of the United States mails. The sheriff had arrested a mail-carrier who had been indicted for murder. In holding the statute not applicable, the Supreme Court, at page 487, made the following statement:

2 The common sense of man approves the judgment mentioned by Puffendorf; that the Bolognian law which enacted, "that whoever drew blood in the streets should be punished with the utmost severity," did not extend

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Korean Armistice Agreement have, as demonstrated by their refusal to elect repatriation to the United States and their records as prisoners of war, adopted, adhered to or supported the aims of Communism, one of which is the overthrow of all non-Communist governments, including the Government of the United States, by force or violence."

to the surgeon who opened the vein of a person that fell down in the street in a fit. The same common sense accepts the ruling, cited by Plowden, that the statute of 1st Edward II, which enacts that a prisoner who breaks prison shall be guilty of felony, does not extend to a prisoner who breaks out when the prison is on fire—"for he is not to be hanged because he would not stay to be burnt." And we think that a like common sense will sanction the ruling we make, that the act of Congress which punishes the obstruction or retarding of the passage of the mail, or of its carrier, does not apply to a case of temporary detention of the mail caused by the arrest of the carrier upon an indictment for murder.

[fol. 59] The defendant urges numerous defenses, including the claim that the statute which provided for pay "during captivity" is inapplicable because the plaintiffs were not really in captivity.

The Army regulations promulgated under the Missing Persons Act and in force at the time provide that the determination of the head of the Department, or his designated subordinate, as to status and as to entitlement to pay and allowances under this Act shall be conclusive. A.R. 35-1325, dated July 15, 1953.

We held in the case of *Moreno v. United States*, 118 C. Cls. 30 (1950), that under the provisions of section 1009, *supra*, of the Missing Persons Act, the Department head was authorized to conclusively determine both the status and entitlement to pay under the Act.

To adopt the construction for which plaintiffs contend would lead the entire purpose of the law into an absurdity.

The plaintiffs admit that they gave aid and comfort to the enemy. The pleadings and stipulations establish that fact. They made it far more difficult for their compatriots who were there with them. They made tape recordings to be used for encouraging the enemy and for discouraging the people of their own country. One of them took pay for these admitted acts. The others were paid in various privileges and advantages. Who can say that these broadcasts and other acts did not cause loss of life in the struggle?

Certainly it added to the hardships and suffering of their compatriots. The proof of these acts is overwhelming in the record. They were denied neither in the pleadings nor in the evidence.

For the purposes of a suit for civilian pay these facts are abundantly proven. For penalty or punishment purposes a trial by a court martial or for treason is perhaps necessary, but this is a civil court in which plaintiffs must establish their rights to affirmatively recover. In the face of these admitted facts the showing of a right to recovery fails. Neither the light of reason nor the logic of analysis of the undisputed facts of record can possibly justify the granting of a judgment favorable to these plaintiffs.

[fol. 60] Plaintiffs start up a difficult mountain to a summit of sheer legalism. Somewhere amid the mists and clouds along the way the spirit of the law completely disappears and its broken body lies in an unmarked spot under an avalanche of technical snow.

I cannot believe that any law can be as cold and lifeless as that. The law has for its primary purpose the ends of justice; otherwise it is as useless as a child trying to grasp a handful of sunlight. The law is a living thing, is not an end in itself but a means to an end. If it fails in this one thing it fails in everything.

To allow recovery in these cases would be to put a premium on dishonor and a penalty on courageous loyalty. We do not see how this court, or any court, can construe the law in such a fashion.

During the period involved here the defendant made certain payments for insurance and dependents. These were made largely for the benefit of the dependents of these soldiers and were not paid directly to the soldiers. The dependents in this record are not shown to have had any part in the actions of these unfortunate soldiers during the period involved here and are not parties to this suit. We do not believe that the ends of justice would be served by granting a judgment for the Government on its counterclaims.

The plaintiffs' petition and the defendant's counterclaims are dismissed in each of the cases.

It is so ordered.

LARAMORE, *Judge*, and WHITAKER, *Judge*, concur.

MADDEX, *Judge*, dissenting:

The statutes upon which the plaintiffs found their claims are 50 U.S.C. Appendix (1952 ed.) § 1002 and 10 U.S.C. (1952 ed.) § 846. The former statute says:

Any person who is in active service and who is officially determined to be absent in a status of missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered or besieged shall, for the period he is officially carried or determined to be in any such status, be entitled to receive or to have credited to his account the same pay and allowances to which he was entitled at the beginning of such period of absence . . .

[Hol.61] The second statute cited above is to the same effect.

The plaintiffs, soldiers in the Korean War, were captured by North Korean or Chinese communist forces, two of them in 1950 and the third in 1951, and were prisoners until August 5, 1953, at which time the repatriation of prisoners following the Armistice began. The plaintiffs refused repatriation to the United States and elected to go to communist China. All three were dishonorably discharged from the Army on January 23, 1954. All three returned to the United States in July, 1955.

The plaintiffs have not been paid for the periods between the dates of their capture by the enemy and the date of their release from prison. They sue for that pay and point to the statutes. The statutes seem to say that they are entitled to their pay.

The Government says the statute should not be read as entitling them to their pay because the Army and this court have found as a fact that their conduct, while prisoners of war, was traitorous and contemptible.

No sophisticated person needs be told that there is much that a court can do with the literal language of a statute in order to avoid an absurd result or to produce a just result or one consistent with an important policy. But the judicial

rewriting of statutes ought to be indulged in with reluctance, and only when it is reasonably certain that the process will not do more harm than good, will not confuse the law rather than enlighten it.

The court, by adopting the Government's argument, has in effect placed in the disbursing officers of the Government the function of amending the statutes fixing the pay of military or civilian personnel on a *quantum meruit* basis. Both the military and civilian branches of Government service have their quotas of dead wood, and their quotas of persons of extraordinary value to the Government. Presumably, the paymasters may not pay the latter persons more than the statutes permit, but under today's decision it would seem that they may pay the former persons only what they are worth, which would be well below the statutory scale.

It will be said, of course, and truthfully said, that the conduct of the plaintiffs as prisoners of war was indecent [fol. 62] and reprehensible. The Government says that they must not be "rewarded" for such conduct by getting the pay which the statutes provide for prisoners of war. There has never been a war in which some prisoners have not acted contemptibly, in comparison with the conduct of their better balanced comrades. In modern warfare, with its subtle brainwashing techniques, one of the perils to badly balanced youths is the peril of being taken prisoner, of being persuaded to disloyal conduct, and of coming out of prison with their lives irreparably ruined. The amounts of pay here sued for by these plaintiffs would be a fabulous reward, indeed, for the tragic thing that happened to them in prison.

The statutes provide for the trial and punishment of soldiers for misconduct. If these men had been subjected to trial by a court-martial, or by a civilian court, the court would have considered their age, their upbringing, their mental qualities, the nature of the pressures to which they were exposed, and would have rendered an appropriate judgment. The judgment would not have included forfeiture of accrued pay. The Uniform Code of Military Justice, effective May 5, 1950, 64 Stat. 126, 50 U.S.C. § 638, provides that no forfeiture of pay and allowances shall extend to any

pay or allowances accrued before the date when a court-martial sentence is approved by the convening authority.

It is noteworthy that after Congress abolished the historical power of courts-martial to forfeit accrued pay, the Army, apparently for the first time in history, forfeited the pay already accrued to these plaintiffs, not by the process of trial and sentence, which was forbidden by statute, but by the crude and primitive method of refusing to give them their money. Finding nothing in the law books to justify its refusal to pay these men, it threw the books away and just refused to pay them. It could have set before these confused young men a better example of government by law.

Congress has never been willing to venture into the field of distinguishing, in its pay schedules between good soldiers and bad soldiers, or between bad soldiers and soldiers so bad that they are beneath contempt. I venture to predict that it will never do so, because the task would be impossible.

The plaintiffs have incurred the just condemnation of [fol. 63] public opinion. The courts have nothing to do with that judgment. In court they are entitled to judgment according to law. I think that, according to law, they are entitled to their pay.

#### FINDINGS OF FACT

The court, having considered the evidence, the report of Trial Commissioner C. Murray Bernhardt, and the briefs and argument of counsel, makes findings of fact as follows:

1. The plaintiffs, Otho G. Bell, William A. Cowart, and Lewie W. Griggs, were citizens of the United States at the time of their enlistments in the United States Army, and there is no evidence that their status as such has changed.

2. The plaintiffs, Bell, Cowart, and Griggs, enlisted in the United States Army on the respective dates of January 29, 1949, January 7, 1949, and August 4, 1949.

3. The plaintiffs, Bell, Cowart, and Griggs, were captured by the North Korean and/or Chinese communist forces in Korea, along with other United States soldiers, on



the respective dates of November 30, 1950, July 12, 1950, and April 25, 1951.

4. At the times of their capture as aforesaid the plaintiffs were privates first class in the United States Army.

5. Upon their capture as aforesaid the plaintiffs Bell and Griggs, were detained, respectively, in Prisoner of War Camp No. 5 located at Pyoktong, North Korea, and in Prisoner of War Camp No. 1. The record does not disclose the place of detention of the plaintiff Cowart.

#### Activities of Plaintiffs During Detention

6. The parties by their attorneys entered into a stipulation of record by the terms of which, for the purposes of this proceeding, certain facts were to be deemed to have been elicited from defendant's witnesses testifying under oath, without the necessity of calling such witnesses to trial. The plaintiffs did not rebut the facts so elicited and waived the right to testify or to call witnesses to testify in rebuttal of the said facts, although the plaintiffs did reserve the right to object to the materiality and relevancy of any of the facts. The facts so set forth in the stipulation related to the activities of the plaintiffs while they [fol. 64] were detained as prisoners of war, and (as slightly modified) are provided in detail as to each plaintiff in succeeding findings 7 through 30.

#### Otho G. Bell

7. During his confinement by enemy forces as aforesaid plaintiff Bell voluntarily served as a monitor in required squad study group meetings organized by the Chinese, beginning about January 1, 1951. These were also known as "forced study groups", which POW's were forced to attend under threat of duress. Armed guards were present at these sessions. The programs consisted of lectures depicting the derogatory aspects of life in the United States, and extolling the idyllic aspects of life under communism. As squad monitor, Bell procured communist propaganda literature from the enemy, distributed said writings among the squad members, and instructed them to read and dis-

discuss this literature. He threatened to turn in the names of any prisoners of war who refused to read or discuss favorably these communist propaganda handouts. In these forced attendance study group meetings he also lectured and led the discussions favorable to the communist cause and condemnatory of the United States, e.g., stating that the United States engaged in germ warfare, that the United States had caused the Korean war, that American forces had committed atrocities, that there were many more advantages about communism than about democracy. He voluntarily attended the special Voluntary Study Group maintained by the Chinese to indoctrinate the so-called "progressives", a term meaning POW's who consorted, fraternized and cooperated with their captors. He voluntarily joined the Peace Committee, whose members espoused communism through public address system broadcasts, and through distribution of propaganda articles and petitions.

8. Plaintiff Bell made tape recordings which were then broadcast over the Peiping radio and over the prison camp's public address system. He stated that the Chinese treatment of the prisoners of war was good, requested that his parents and relatives write President Truman to end the war and withdraw the Seventh Fleet from Formosa, said that the Korean war was senseless, avowed that on the [fol. 65] orders of his platoon leader, his men killed North Korean prisoners of war, vilified President Truman as a warmonger, averred that life was better in China than in the United States, declared the American political parties were led by imperialists.

9. Plaintiff Bell participated in numerous communist propaganda activities. He wrote articles which appeared in the camp newspaper, *Towards Truth And Peace*, and in magazines entitled, *People's China*, and *China Monthly Review*. In these articles plaintiff alleged that American troops had committed atrocities against North Korean civilians and enemy soldiers and that he personally had been ordered to kill women and children and not to take prisoners. He ridiculed the American Army. He praised the good treatment accorded the prisoners of war by the Chinese. He wrote that the United States was unjustified in

sending troops to Korea, and that he wanted to go to China to fight for peace and did not want to return to America. He urged the prisoners of war to vow to fight for world peace on their return to the United States. He accused President Truman of forcing the United States into war and said that if given the opportunity he would run a tank over the President's body. Plaintiff Bell was paid money to write these articles. With the money he was paid to write these articles, he purchased candy and cigarettes in the Chinese Post Exchange in Pyoktong.

10. Plaintiff Bell was a member of the so-called "Wall Paper Committee" whose duties were to hang enemy propaganda articles, pictures, cartoons and slogans on the camp bulletin board. He delivered lectures before his company and to the camp upon American aggression, and belittled America's economic and educational systems. He wrote letters to the United Nations in which he declared that American troops had committed atrocities against enemy civilians and soldiers, and that prisoners of war were receiving good treatment from their captors:

11. Plaintiff Bell drew cartoons and posters depicting American atrocities and use of germ warfare, which were pinned upon the camp bulletin boards and printed in the above-named publications. He drew up and signed peace petitions addressed to President Truman, the United Nations, to relatives of prisoners of war, and to peace organizations, e.g., Stockholm Peace Appeal, the Vienna Peace Conference, and the Asia and Pacific Peace Conference. Further, the Chinese made motion pictures of plaintiff as he signed the petition addressed to the Asia and Pacific Peace Conference. He led a group of so-called progressives in camp carrying banners depicting President Truman as a clown and slogans reading "Down with capitalists". Plaintiff Bell appeared in bi-monthly plays—one entitled "Golden Boy" depicting poverty and racial discrimination in the United States, and the other which he wrote was entitled "The Highest Stage of Capitalism" concerning the overthrow of the United States. He appeared voluntarily in a Chinese motion picture in which he portrayed an American rifleman captured by the communists.

The motion picture depicted atrocities committed by American soldiers and the low morale of the American forces. He also signed surrender leaflets. He attempted to persuade and/or persuaded other prisoners of war to join the Voluntary Study Group and the Peace Committee. He also tried to persuade and/or persuaded other POW's to sign petitions, to follow and accept communistic theories, and to make recordings.

12. Plaintiff Bell made the following statements—that for every good point about the American Government, there were three good things about communism; that the South Koreans started the war and that it was like the Civil War in the United States, that American troops were tools and hatchet-men of American imperialists, that the United States and the United Nations had no right to be in war, that the United States engaged in germ warfare, that if he were given a weapon he would fight against the United States and that he had attempted to join the Chinese Army but had been refused, that he would return from China in five years and would teach communism and help fight for communism, that the working people are slaves and cannon fodder for the capitalists, that he was not going to return to the United States and planned to renounce his citizenship and stay in China to fight for the peoples' side.

13. Plaintiff Bell wore the Chinese uniform, plus the Peace Dove Medal (given by the Chinese to show that the wearer was in sympathy with communism) and the Mao [fol. 67] Tse Tsung medal (given by the Chinese to so-called "progressives") to identify them as communists and to reward them for their achievements and learning in communistic ideology. He consorted with the Chinese. He attended enemy parties held in Pyoktong. He visited the Chinese company and regimental headquarters in the prison camp frequently, in the day and at night. He took walks and talked with Chinese officers, inside and outside the camp. He was accorded special privileges by the Chinese, e.g., more and better food and drink, better medical treatment, freedom of the camp, lighter work details.

14. As squad leader in Camp No. 5, he sold food intended for the sick to other POW's at \$5 a bowl. As monitor of the

forced study group, he had food rations for some men cut down because they would not favorably discuss communism, and threatened to turn in the names of men who did not study the communistic literature. He informed on other POW's. As monitor of the forced study group, he would inform the Chinese if a squad member refused to read required propaganda literature, or failed to voice a procommunist opinion in the discussion periods. He told the Chinese that a certain POW was planning to escape and, as a result, the POW was placed in solitary confinement. He told the Chinese that he and others in his outfit had killed Chinese POW's and this falsification caused the Chinese to attempt to pressure another POW into writing a story about these atrocities. He told the Chinese that the 2d Infantry Division massacred South Korean civilians. A United States POW was interrogated as a result of plaintiff's written statement to the Chinese that American troops herded communist POW's on a ship and injected poison gas into their blood, that the American Air Force bombed women and children, and that he saw an American lieutenant and enlisted men rape a Korean woman.

15. Plaintiff Bell turned in names to the Chinese of POW's whom he had ordered to obtain their rations, but who had been too ill to obey. He reported a POW who had refused to fall out for exercise, who was therefore sentenced to 15 days at hard labor with his rations cut to one meal a day. He informed on POW's who stole wood from the Chinese. He also informed the Chinese that POW's had [fol. 68] stolen food for which acts they were put into solitary confinement. As a result of plaintiff's relation to the Chinese, a POW had a fight with another POW and one of them was placed in solitary. Because he reported to the Chinese that certain POW's had criticized him, these POW's were made to stand outdoors in the sun all day and were sentenced to hard labor. He reported to the Chinese the name of a POW who planned to escape, and the latter was placed in "the hole" where he died. Because he gave

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\* The "hole" was a damp hole in the earth of dimensions which did not permit the occupant to stand, sit, or lie down. It was covered by a tin roof and lacked sanitation facilities.

the names to the Chinese of POW's who participated in a sit-down strike, one of the men was bayoneted and the rest were placed in solitary. A POW was forced to stand in an icy river because plaintiff told the Chinese that the former had "talked back" to him.

16. The Korean armistice was signed July 27, 1953, and prisoner repatriation began August 5, 1953, at Panmunjon. Plaintiff Bell refused repatriation and voluntarily elected to go to communist China. After going to communist China, he attended the Ideological Reformation School in Taiyuan, China, where communist ideology was taught, for seven months. He was assigned to a machine center on a collective farm in the Yellow River Valley, China, where he worked until his return to the United States. On January 23, 1954, plaintiff Bell was dishonorably discharged from the United States Army. He returned to the United States in July 1955.

#### William A. Cowart

17. During his confinement by enemy forces as aforesaid plaintiff Cowart stole food from other POW's in the North Korean prison camps. He visited the headquarters of the North Korean forces frequently, and conversed with Korean officers and Russian civilians there. He told the North Korean captors that two fellow POW's had beaten him for stealing their food. He informed a North Korean colonel that the POW's had disobeyed orders by giving prisoners too ill to work full rations rather than half rations. He informed North Korean captors that a POW had stolen foodstuffs and that a POW was planning to escape. He [fol. 69] signed a petition calling on the United Nations forces to lay down their arms. He received extra tobacco rations from the North Korean guards and was given light work details.

18. Subsequent to October 19, 1951, plaintiff Cowart was transferred to Chinese Prisoner of War Camp No. 3. He was a monitor of the forced study group there, and was a member of the Voluntary Study Group attended by all so-called "progressives" for the purpose of communistic indoctrination.



trination. He influenced or attempted to influence other POW's to join the Voluntary Study Group and to believe in the communistic dogma. He made tape recordings which were later broadcast over Peiping radio and over the camp public address system. He therein broadcast about the good treatment accorded to POW's by the Chinese. He urged that America end the war and the American Government be petitioned to end the war. He declared that the Korean war was useless, that American soldiers were being cheated by the capitalists and warmongers of Wall Street, and that America should cooperate with the Chinese.

19. Plaintiff Cowart was a member of the Peace Committee which drew up, signed and circulated peace petitions. He wrote propaganda articles which appeared in *Towards Truth And Peace* and in the *China Monthly Review*. He wrote that American soldiers committed atrocities, that Americans used germ warfare, that the Chinese had a better educational system than the United States in that in America only the wealthy could obtain an education, that the United States used germ warfare, that the American people had been misled and that the United States was waging an aggressive war. He reviewed the communist books he had read. He drew propaganda posters and cartoons, depicting capitalists living off the masses, Uncle Sam hanging from a tree or lying in a coffin with the words written "For Peace and Against American Aggression" and "Down With War Mongers", depicting Uncle Sam carrying a bomb, and Uncle Sam on his knees before a Chinese soldier armed with a bayonet.

20. Plaintiff Cowart acted in several camp plays. One play mocked the various United Nations. Other plays depicted that the use of a germ warfare bomb and the use of [fol. 70] an atomic bomb benefited capitalists, that civilians were being coerced to join the American Army. In another play, he portrayed an American POW who was being treated well by the Chinese while other American soldiers were stupidly fighting in foxholes. Another play satirized President Truman and General Ridgway, at the end of which the actors, including Cowart, said "Down With the United States."

21. Plaintiff Cowart wore a Chinese uniform, the Peace Dove Medal and the Stalin Badge. He informed on POW infractions or actions, for which they were later punished. He reported to the Chinese that POW's had stolen food from the Chinese warehouse, that certain POW's made anti-communist remarks, that he (Cowart) had been beaten by POW's, that certain POW's were either not studying the propaganda given to them or were not giving the correct answers in the forced study group meetings, that a POW was planning to escape, that certain POW's had torn up slogans and pictures in the progressives' Study Club Room.

22. Plaintiff Cowart consorted with the Chinese running the prisoner of war camp, attended Chinese parties, walked and talked with Chinese officers, guards and interpreters, and lived for some time at the Chinese regimental headquarters. He was given special privileges, e.g., better rations, quarters, no work details, and was allowed to make purchases at the Chinese Post Exchange in Pyong-yang.

23. Plaintiff Cowart stated that he believed in communism, that any thinking person would adopt communism, that he hated America, that its Government should be overthrown, that he desired to study in China and return to the United States in five years to help in the overthrow of the Government, which was inevitable, that the American Government was fascistic, similar to the German Government. He wrote a letter to Mao Tse Tsung in which he stated his belief in communism, criticized the American economic and educational systems, asked for the opportunity to study in China and join the communist party, and gave thanks for the kind treatment accorded him by the Chinese.

24. The Korean armistice was signed July 27, 1953, and prisoner repatriation began August 5, 1953, at Panmunjon. Plaintiff Cowart refused repatriation and voluntarily elected to go to communist China. After going to communist China he voluntarily attended a communist indoctrination school at Taiyuan, China, where communist ideology was taught, for seven months. On January 23, 1954, plaintiff Cowart was dishonorably discharged from the United States Army. In July 1955, he returned to the United States.

Lewie W. Griggs

25. During his confinement by enemy forces as aforesaid plaintiff Griggs was a monitor in the forced study group meetings in the prisoner of war camp wherein he led the discussions after he had lectured on communism. He was also a member of the Voluntary Study Group which he attended regularly with other so-called "progressives". He was a member of the Peace Committee which drew up, signed and circulated peace petitions. He attempted to influence and persuade POW's to join the Voluntary Study Group and Peace Committee, to sign petitions, and to follow communistic doctrines. He wore a Peace Dove Medal, and also wore a black arm band at Stalin's death. As a member of the Permanent Peace Committee he wore a cloth inscribed with Chinese writing on his chest.

26. Plaintiff Griggs was a member of a Kangaroo Court invoking punishment on POW's for infractors. He appeared as a witness against a POW and signed his name to the charges. A POW, after being released from a cellar by the Chinese, was returned to the cellar at the suggestion of the Peace Committee on which plaintiff Griggs served. He recommended to the Chinese various punishments to be meted out to POW's for breaking rules, while other squad members stated that nothing should be done. He informed on POW's. He revealed names to the Chinese of POW's who led a mass exodus from a communist entertainment show. He disclosed to the Chinese the name of a POW who had planned to escape. As monitor, he disclosed the names of those who criticized communism or refused to study communistic literature, and revealed the names of POW's who had stolen food and tobacco from the Chinese warehouse.

27. Plaintiff Griggs made recordings for the Chinese radio, which were also sent out over the camp public address system. Roundtable discussions of the so-called "progressives", in which plaintiff participated, were recorded [fol. 72] and broadcast. He spoke over the camp public address system. The subjects of these recordings and broadcasts were, that atrocities had been committed by American troops, that the American Government should be over-

thrown, that the Korean war was the fault of the United States. One of the recordings, which was directed to plaintiff's mother and played back over the public address system, requested that his mother join organizations for peace and persuade President Truman to withdraw troops from Korea. As a member of the Peace Committee, he drew up, signed and circulated peace petitions which urged the cessation of war and the use of bombs and germ warfare by the United States. He signed surrender leaflets and letters addressed to his friends which were dropped behind United Nations lines. These letters and leaflets urged surrender and described the good treatment provided by the Chinese.

28. Plaintiff Griggs wrote propaganda articles to which he signed his own name or unauthorizedly signed the name of another POW. These articles were published in *Towards Truth and Peace* and in other camp publications. In these articles he urged that the United States should cease fighting, declared that the United States used germ warfare and committed atrocities, and stated that the Chinese were good friends. He delivered speeches to groups of POW's to the effect that he and a committee had read confessions of American Air Force officers as to the use of bacteriological warfare and that he (Griggs) believed the confessions. He wrote letters to various groups and individuals in the United States urging them to write to the Government requesting peace. He uttered pro-communist and anti-American statements, e.g., that the United States was the aggressor, a war-monger, that American capitalists in control of the Government started the Korean war, that if he were given a weapon he would fight the United Nations forces, that the United States used germ warfare, that the study of communism was beginning to make sense to him, that he believed in communism, that the Chinese were right in embracing communism, that when he returned to the United States it would be communistic and he would be a hero, that the whole world would be dominated by communism in ten years and that individuals similar to him would be [fol. 73] leaders, that he would join the communist party when he returned to the United States, that he would sell out the United States for a tailor-made cigarette.

29. Plaintiff Griggs consorted with the Chinese in the prisoner of war camp, attended enemy parties, visited Chinese headquarters frequently, walked and talked with enemy officers and interpreters, and called or referred to the Chinese as "comrades". He was accorded special privileges in that he received better food, drink, medical treatment, had freedom of the camp and did not have to go out on work details.

30. The Korean armistice was signed July 27, 1953, and prisoner repatriation began August 5, 1953, at Panmunjon. Plaintiff refused repatriation and voluntarily elected to go to communist China. He signed letters prepared by the Chinese addressed to the families of Edward Dickenson and Claude Dickenson. In these letters plaintiff declared the imprisonment of these two men was unjust. He attended a communist indoctrination school at Taiyuan, China, for six months. He was assigned to a state farm in the Yellow River Valley, China, and later was transferred to a factory at Kaifeng until his return to the United States. On January 23, 1954, plaintiff Griggs was dishonorably discharged from the United States Army. He returned to the United States in July 1955. On his return he stated that he returned to the United States because China was a slave state and because having a job, going to school, taking vacations and having a family and hobbies were practically out of reach in China.

#### General

31. With reference to the plaintiffs' assertions while confined as POW's that the United States engaged in germ warfare in Korea, as related in findings 7, 11, 12, 19, 20, 27 and 28, *supra*, at trial the plaintiffs' counsel stipulated that neither the United States nor any of the United Nations forces engaged in germ warfare in Korea. The defendant produced as witnesses certain Army staff officers who testified authoritatively that the United States did not authorize the use of germ warfare in Korea, did not ship any materials or equipment to Korea for that purpose, and received [fol. 74] no requests for such materials or equipment, although the defendant conceded that at all relevant times the

United States possessed in the United States a military potential to wage germ warfare. In view of the concession by plaintiff's counsel that the United States did not use germ warfare in Korea, the commissioner sustained plaintiffs' objection to the defendant's testimony but permitted it to remain in the record as defendant's offer or proof under Rule 41(c). The plaintiffs endeavored, without success and only through the medium of cross-examining defendant's witnesses, to establish that they originally had reasonable grounds to believe that their statements as to germ warfare while POW's were true when made.

32. With reference to plaintiff Bell's statement to the Chinese that American troops had injected poison gas into the blood of communist POW's on a ship (finding 14, *supra*), plaintiffs' counsel stipulated at trial that this had not been done.

33. With reference to the plaintiffs' assertions while confined as POW's that conditions in the POW camps in North Korea where captured Americans and their allies were confined were good, plaintiffs' counsel stipulated that such conditions were not good. The defendant established by affirmative proof that conditions in the communist POW camps in North Korea were so grossly inadequate as to food, clothing, sanitation, shelter, and medical care that the death rate of POW's was nearly 40 percent in certain camps.

### Damages

34. After each plaintiff was captured and before each plaintiff refused repatriation and elected to go to communist China, the Department of the Army took routine administrative action to reflect a change in each plaintiff's records to show them as Corporals as of May 1, 1953. None of the plaintiffs has received any pay for the period from the date he was captured to January 23, 1954, the date each was dishonorably discharged, except amounts advanced by the Army for insurance and allotments for the dependents of each plaintiff. It was stipulated by the parties that, if this court decides that the plaintiffs, or any of them, are



[fol. 75] entitled to recover as a matter of law, the net amount of damage suffered by each plaintiff by reason of the allegations in the petition is as follows:

Otho G. Bell .....	\$1,455.29
William A. Cowart .....	4,991.13
Lewie W. Griggs .....	2,810.14

#### CONCLUSION OF LAW

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that the plaintiffs are not entitled to recover, and the petition therefore is dismissed.

The court further concludes as a matter of law that the defendant is not entitled to recover of and from the plaintiffs on its counterclaims, and the counterclaims are therefore dismissed.

[fol. 76] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 77]

SUPREME COURT OF THE UNITED STATES

No. 942—October Term, 1959

OTHO G. BELL, et al., Petitioners,

vs.

UNITED STATES.

ORDER ALLOWING CERTIORARI—June 27, 1960

The petition herein for a writ of certiorari to the United States Court of Claims is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

William A. Cowart, RA 14 313 076  
12 Jul 50 - 23 Jan 54

CREDITS

Balance due 12 Jul 50				
PFC (under 2 years' service)	12 Jul 50 - 6 Jan 51	@ \$ 95.55		\$ 39.34
PFC (over 2 years' service)	7 Jan 51 - 30 Apr 52	@ 102.90		\$ 557.37
PFC (over 2 years' service)	1 May 52 - 6 Jan 53	@ 107.02		1625.82
PFC (over 4 years' service)	7 Jan 53 - 30 Apr 53	@ 114.66		877.56
CPL (over 4 years' service)	1 May 53 - 23 Jan 54	@ 137.59		435.71
Foreign Duty Pay	12 Jul 50 - 30 Apr 53	@ 9.00		1206.20
Foreign Duty Pay	1 May 53 - 23 Jan 54	@ 13.00		302.70
Combat Pay	1 Jul 50 - 31 Oct 50	@ 45.00		113.97
Soldiers Deposits				180.00
Interest on Soldiers Deposits				10.00
				1.71
			Total Credits	<u>\$5350.38</u>

DEBITS

Soldiers Home

12 Jul 50 - 23 Jan 54 @ \$ 0.10  
Balance Due \$ 4.25  
\$5346.13

Lewie W. Griggs, RA 18 322 825  
25 Apr 51 - 23 Jan 54

# CREDITS

Balance due 25 Apr 51				\$ 63.33
PFC (under 2 years' service)	25 Apr 51 - 3 Aug 51	@ 95.55		315.32
PFC (over 2 years' service)	4 Aug 51 - 30 Apr 52	@ 102.90		915.81
PFC (over 2 years' service)	1 May 52 - 30 Apr 53	@ 107.02		1284.24
CPL (over 2 years' service)	1 May 53 - 3 Aug 53	@ 129.95		402.83
CPL (over 4 years' service)	4 Aug 53 - 23 Jan 54	@ 137.59		779.68
Foreign Duty Pay	25 Apr 51 - 30 Apr 53	@ 9.00		217.80
Foreign Duty Pay	1 May 53 - 23 Jan 54	@ 13.00		113.97
Combat Pay	1 Jul 50 - 31 Jul 51	@ 45.00		585.00
Soldiers Deposits				30.00
Interest on Soldiers Deposits				3.70
			Total Credits	\$4711.68

# DEBITS

Class N Almt	1 May 51 - 31 Dec 53	@ 6.40	\$ 204.80	
Class E Almt	1 May 51 - 31 May 51	@ 10.00	10.00	
Class E Almt	1 Jun 51 - 31 Dec 53	@ 50.00	1550.00	
Class E Almt	1 May 51 - 31 Dec 53	@ 4.17	133.44	
Soldiers Home	1 May 51 - 23 Jan 54	@ 0.10	3.30	
			Total Debits	\$1901.54
			Balance Due	\$2810.14

The following allotments were paid by the U. S. Army Finance Center for the periods and to the individuals indicated: -

Class N Allotment to Veterans Administration for National Service Life Insurance - 1 Aug 49 - 31 Dec 53 at \$6.40 per month.

Class E Allotment to Elsie C. Griggs, Box 1294, Neches, Texas - 1 Sep 49 - 31 May 51 at \$10.00 per month.

Class E Allotment to Mrs. Albert Griggs, Box 1294, Neches, Texas 1 Jun 51 - 31 Dec 53 at \$50.00 per month.

Class E Allotment to Government Personnel Mutual Life Insurance Company, San Antonio, Texas 1 Sep 49 - 31 Dec 53 at \$4.17 per month.

Otho G. Bell, RA 18 276 618  
30 Nov 50 - 23 Jan 54

# CREDITS

Balance due 30 Nov 50				\$ 3.32
PFC (under 2 years' service)	30 Nov 50 - 23 Feb 51	@ \$ 95.55		\$ 270.72
PFC (over 2 years' service)	25 Feb 51 - 30 Apr 52	@ 102.90		1461.17
PFC (over 2 years' service)	1 May 52 - 24 Feb 53	@ 107.02		1048.80
PFC (over 4 years' service)	25 Feb 53 - 30 Apr 53	@ 114.66		252.25
CPL (over 4 years' service)	1 May 53 - 23 Jan 54	@ 137.59		1206.20
Foreign Duty Pay	30 Nov 50 - 30 Apr 53	@ 9.00		261.30
Foreign Duty Pay	1 May 53 - 23 Jan 54	@ 13.00		113.97
Basic Allowance for Quarters	30 Nov 50 - 25 Jan 51	@ 45.00		84.00
Basic Allowance for Quarters	26 Jan 51 - 30 Apr 52	@ 67.50		1023.75
Basic Allowance for Quarters	1 May 52 - 23 Jan 54	@ 77.10		1601.11
Combat Pay	1 Aug 50 - 28 Feb 51	@ 45.00		315.00
		Total Credits		\$7641.59

# DEBITS

Class N Almt	1 Dec 50 - 31 Dec 53	@ \$ 6.40	\$ 236.80
Class E Almt	1 Dec 50 - 31 Aug 53	@ 50.00	1650.00
Class Q Almt	1 Dec 50 - 31 Jan 51	@ 85.00	170.00
Class Q Almt	1 Feb 51 - 31 Jul 52	@ 107.50	1935.00
Class Q Almt	1 Aug 52 - 31 Aug 53	@ 117.10	1522.30
Class Q Almt	1 Sep 53 - 31 Dec 53	@ 167.10	668.40
Soldiers Home	1 Dec 50 - 23 Jan 54	@ 0.10	3.80
		Total Debits	\$6186.30
		Balance Due	2145.29

## Explanation of Debits

The following allotments were paid by the U. S. Army Finance Center for the periods and to the individuals indicated:

Class N allotment to Veterans Administration for National Service Life Insurance 1 Feb 49 - 31 Dec 53 at \$6.40 per month.

Class E allotment to Jewell J. Bell, Route 5, Box 494, Olympia, Washington 1 Dec 50 - 31 Aug 53 at \$50.00 per month.

Class Q allotment to Jewell J. Bell, Route 5, Box 494, Olympia, Washington 1 Dec 50 - 31 Jan 51 at \$85.00 per month.

Class Q allotment to Jewell J. Bell, Route 5, Box 494, Olympia, Washington 1 Feb 51 - 31 Jul 52 at \$107.50 per month.

Class Q allotment to Jewell J. Bell, Route 5, Box 494, Olympia, Washington 1 Aug 52 - 31 Aug 53 at \$117.10 per month.

Class Q allotment to Jewell J. Bell, Route 5, Box 494, Olympia, Washington 1 Sep 53 - 31 Dec 53 at \$167.10-per month.

EXHIBIT "8" TO COMMISSIONER'S REPORT

[fol. 80]

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